

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

J.E.F.M., a minor, by and through his Next Friend, Bob
Ekblad, et al.,

Plaintiffs-Petitioners,

v.

Eric H. HOLDER, Attorney General of the United
States, et al.,

Defendants-Respondents.

Case No. 2:14-cv-01026-TSZ

**DECLARATION OF TIN THAN NGUYEN,
ESQ. IN SUPPORT OF PLAINTIFFS'
MOTIONS FOR CLASS CERTIFICATION
AND PRELIMINARY INJUNCTION**

NGUYEN DECL.
(Case No. 2:14-cv-01026-TSZ)

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**DECLARATION OF TIN
THANH NGUYEN, ESQ.**

I, Tin Thanh Nguyen, Esq., declare as follows:

1. I submit this declaration in support of Plaintiffs' Reply in Support of their Motions for Preliminary Injunction and Class Certification. I have personal knowledge of the facts set forth herein, and, if called as a witness, I could and would testify competently as follows:

2. I am a licensed attorney in the state of North Carolina and in good standing with the North Carolina State Bar. I am an attorney with Central Law Group, PLLC, which is a four-attorney general practice law firm located in Charlotte, North Carolina. I primarily practice immigration law, with a focus on removal defense.

NGUYEN DECL. - 1
(Case No. 14-cv-01026-TSZ)

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1 3. I graduated from North Carolina Central University School of Law in December 2006. I have
2 practiced immigration law since 2006 and have represented well over 200 respondents facing
3 removal proceedings at different stages of the removal process. Over the past couple of years, I have
4 represented over 20 children in removal proceedings in the Charlotte Immigration Court. Currently, I
5 represent 6 children, but I expect this number to grow as more unaccompanied children are placed
6 with sponsors in North and South Carolina.

8 4. I am an active member of the American Immigration Lawyers Association (AILA), where I
9 serve as the Carolinas Chapter's Pro-Bono Chair. In that capacity I coordinate different projects to
10 provide pro bono legal assistance to indigent immigrant and refugee communities living in North
11 and South Carolina. The most recent AILA Carolinas Chapter pro bono project is to recruit and train
12 a network of pro bono attorneys in Charlotte and throughout North and South Carolina to represent
13 children who are in removal proceedings before the Charlotte Immigration Court. I also regularly
14 volunteer with the Immigration Assistance Project (IAP), a program through which pro bono
15 attorneys provide legal consultations to individuals appearing at their first master calendar hearings
16 at the Charlotte Immigration Court.

19 5. As part of my individual practice and through my work with AILA and IAP, I regularly
20 attend the Charlotte Immigration Court, where I observe the scheduling and case management
21 practices in both my cases and others. I also communicate regularly with the Court (even when I am
22 not physically present there) for purposes of scheduling my own cases. In the past several weeks, I
23 have noticed a marked increase in the number of children at master calendar hearings at the
24 Charlotte Immigration Court. I also have observed a change in the way the Immigration Judges (IJs)
25 and the Immigration and Customs Enforcement's Office of Chief Counsel (OCC) have handled the
26 influx of juvenile cases docketed in this court.

1 6. IJ Theresa Holmes-Simmons typically presides over two juvenile dockets each month at the
2 Charlotte Immigration Court. Since late July 2014, the number of juveniles on many of IJ Holmes-
3 Simmons' dockets have nearly doubled or, in some cases, tripled. The other two IJs also have
4 presided over special expedited juvenile dockets, which is unusual.

5 7. For the month of August, there were 9 juvenile dockets, which is a record number in the
6 Charlotte Immigration Court. The court provided IAP with a list of respondents for seven of the
7 juvenile dockets. The lists showed that the following numbers of children were scheduled for each
8 of these dockets: 45 on August 11, 2014; 53 on August 12, 2014; 67 on August 13, 2014; 100 on
9 August 20, 2014; 27 on August 25, 2014; 62 on August 26, 2014; and 71 on August 27, 2014.

10 8. I attended juvenile dockets at the Charlotte Immigration Court on July 31, 2014 and August
11 12, 2014. On July 31, 2014, I observed IJ Holmes-Simmons' juvenile docket. The IAP coordinator
12 told me, based on information she received from the court, that this was a special expedited juvenile
13 docket. After I observed the docket, the IAP coordinator also told me that at least ten children did
14 not show up in court, and all of them were ordered removed in absentia.

15 9. After the July 31 hearing, I contacted members of the local AILA chapter to see if
16 representatives from the immigration bar could raise with the court the issue of in absentia removal
17 orders issued against unrepresented children. Attorney Janeen Hicks-Pierre, Esq., who is the AILA
18 Carolinas Chapter immigration court liaison, inquired with the Court Administrator, Mr. R. Elliot
19 Edwards, about how the court is going to handle the new children's cases and whether the
20 Immigration Judges would grant continuances for children rather than issue in absentia orders of
21 removal, given that there appear to be problems with the Notices of Hearing. To my knowledge,
22 Mrs. Hicks-Pierre has not yet received a substantive response to her questions.
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1 10. On August 12, 2014, I attended another juvenile docket with IJ Holmes-Simmons presiding.
2 The hearings began at around 9:00 am. My understanding is that this docket was specially convened
3 to hear the recent influx of children's cases in this court, because it was not at the time that regularly
4 scheduled juvenile dockets are held in the Charlotte Immigration Court. I was there as a volunteer
5 with IAP. The other IAP attorney and I screened children who were appearing for their first hearing;
6 we were able to screen 23 children out of the 53 children on the docket. About 42 children were
7 present at the hearing, and none were represented by counsel. My recollection is that IJ Holmes-
8 Simmons ordered all of the children who were not present in court removed in absentia.

10 11. At that same hearing, IJ Holmes-Simmons, through a Spanish-speaking interpreter, called all
11 of the unrepresented children with their sponsors up to the front of the courtroom at the same time.
12 She told the children that their cases were continued until October 15, 2014. She warned the
13 children and their sponsors that at the next master calendar hearing, the children would have to move
14 forward with their cases by presenting evidence of an application for relief from removal. Otherwise,
15 she would grant the children Voluntary Departure (VD). IJ Holmes-Simmons further warned the
16 children and their sponsors that this would happen with their cases whether or not they are
17 represented by counsel. Moreover, she reiterated that they did not have a lot of time and needed to
18 quickly find an attorney to help them navigate the complex immigration court system.

21 12. Many of the children whom I screened on August 12 had recently received their Notices of
22 Hearing. All the respondents with whom I spoke had less than four weeks of notice, and in the worst
23 case, less than four days. For example, one child had received a notice of hearing on Friday, August
24 8, 2014, for a first master calendar hearing scheduled for the following Tuesday, August 12, 2014.

26 13. Based on my experience representing children and adults in immigration court, it is likely
27 that some of the children did not appear that day because they did not have sufficient time to find

1 transportation to the court or to allow their caretakers to ask for time off from work. Since Charlotte
2 is the only immigration court for all of North and South Carolina, some children must travel up to 5
3 or 6 hours to attend their hearings.

4 14. Although IJ Holmes-Simmons did not order any children who were present in court removed
5 at the August 12, 2014 hearing, I am concerned that, when the children return for their second master
6 calendar hearing, that they will be ordered removed or take VD, as she said would occur. In my
7 experience, it is typical for all of the judges in our court to ask a child if he or she wants to accept
8 voluntary departure from the United States rather than be ordered removed in cases where the child
9 comes to a second immigration court hearing unrepresented and has not applied for some kind of
10 relief from removal. In my experience observing these dockets, children who do not have attorneys
11 almost never apply for relief from removal.
12

13
14 I declare under penalty of perjury of the laws of the State of North Carolina and the United
15 States that the foregoing is true and correct to the best of my knowledge and belief.
16

17
18 Executed this 25th day of August, 2014 in Charlotte, North Carolina.
19

20
21 s/ Tin Thanh Nguyen
TIN THANH NGUYEN, ESQ.

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